

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO**

JOHN VIGIL

Plaintiff,

v.

CAUSE NO.: 16-CV-00067

**THE CITY OF ESPANOLA, and
OFFICER GREG ESPARZA, in his
Official and individual capacities**

Defendants.

NOTICE OF REMOVAL

Pursuant to 28 U.S.C. § 1441(b) and 1446(a) and (b), Defendant Greg Esparza, by and through his undersigned counsel Brennan & Sullivan, P.A. (James P. Sullivan), give Notice of Removal to this Court of the civil action filed in the First Judicial District Court for the State of New Mexico, County of Rio Arriba, No. D-117-CV-2015-00361, filed by Plaintiff John Vigil, and as grounds therefore state:

1. On October 27, 2015, Plaintiff filed a Complaint for Personal Injuries and Civil Rights Violations (“Complaint”) with the First Judicial District Court. A copy of the Complaint is attached hereto as **Exhibit A**.

2. Defendant the City of Espanola was served with the Complaint on October 29, 2015. A copy of the Summons and Return of Service are attached hereto as **Exhibit B**.

3. Defendant Greg Esparza has not been served with the Summons or Complaint and had no notice that this action had been filed until January 21, 2016, although a Summons addressed to him and a copy of the Complaint were apparently delivered to a City of Espanola deputy city clerk on October 29, 2016. See **Exhibit C**, attached hereto. Delivering a copy of the

Complaint and a Summons directed to an Officer Esparza to a deputy city clerk does not constitute proper service. *Moreno v. Taos County Board of Commissioners*, 778 F.Supp.2d 1139 (D.N.M. 2011).

4. On January 28, 2016, Defendant Greg Esparza, through his undersigned counsel, accepted service of the Complaint. See Entry of Appearance and Acceptance of Service for Defendant Greg Esparza attached hereto as **Exhibit D**.

5. This Notice of Removal is timely as it is filed within thirty (30) days of proper service of the Complaint on Defendant Greg Esparza.

6. All Defendants, by and through undersigned counsel, consent to the removal of this action.

7. Pursuant to 28 U.S.C. § 1446(d), copies of the Notice of Removal will be promptly given to all adverse parties and a copy of the Notice of Removal will be filed with the Clerk of the First Judicial District Court, County of Rio Arriba, State of New Mexico.

8 The claims stated against Defendants that are subject to the original jurisdiction of this Court pursuant to 28 U.S.C. 1331 and 1343(a)(3) and (4) are as follows:

- a. Count 1 of Plaintiff's Complaint, alleging violations of the 5th and 14th Amendments pursuant to 23 U.S.C. § 1983. See Exhibit A, Count 1, p. 7;
 - b. Count 2 of Plaintiff's Complaint, alleging violations of the 4th and 14th Amendments pursuant to 42 U.S.C.1983. See Exhibit A, Count 2, p. 8;
 - c. Count 3 of Plaintiff's Complaint, alleging violations of the 4th and 14th Amendments pursuant to 42 U.S.C.1983. See Exhibit A, Count 2, p. 9;
- and

d. Count 4 of Plaintiff's Complaint alleging a *Monell* federal civil rights claim.

9. Federal questions thus appear on the face of Plaintiff's Complaint. The Court also has supplemental jurisdiction over Plaintiff's state law claims in Counts 5 and 6 pursuant to 28 U.S.C. § 1367, as these claims are so related to the federal question claims which this Court has original jurisdiction over that they form part of the same case or controversy under Article III of the U.S. Constitution. See **Exhibit A**, Counts 5 and 6, pp. 11-12.

10. Pursuant to Rule 81.1(a) of the Local Rules of the United States District Court for the District of New Mexico, Defendant(s) will file a Notice of Filing of State Court Record and copies of the pleadings filed in the First Judicial District for the State of New Mexico, County of Rio Arriba, Cause No. D-117-CV-2015-00361, within twenty-eight (28) days of filing this Notice of Removal. A Civil Cover Sheet is attached as **Exhibit E**.

Respectfully submitted,

BRENNAN & SULLIVAN, P.A.

By: /s/ James P. Sullivan
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Attorneys for Defendants
The City of Espanola and Greg Esparza

CERTIFICATE OF SERVICE

The undersigned hereby certifies that on this 29th day of January, 2016, he mailed by first class mail, postage pre-paid, a true and accurate copy of the foregoing to the following:

Lee Hunt, Esq.
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Santa Fe, NM 87505
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Attorney for Plaintiff

By: /s/ James P. Sullivan
James P. Sullivan